

# Back Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



|                  |                   |                |            |
|------------------|-------------------|----------------|------------|
| Appeal Decision: | Denied            | Appeal Number: | 2417206    |
| Decision Date:   | 1/15/2025         | Hearing Date:  | 12/16/2024 |
| Hearing Officer: | Christopher Jones |                |            |

Appearance for Appellant:  
Pro se

Appearance for MassHealth:  
Donna Burns, RN



*The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, Quincy, Massachusetts 02171*

## APPEAL DECISION

|                           |  |                          |                             |
|---------------------------|--|--------------------------|-----------------------------|
| <b>Appeal Decision:</b>   | Denied                                       | <b>Issue:</b>            | Prior Authorization;<br>PCA |
| <b>Decision Date:</b>     | 1/15/2025                                    | <b>Hearing Date:</b>     | 12/16/2024                  |
| <b>MassHealth's Rep.:</b> | Donna Burns, RN                              | <b>Appellant's Rep.:</b> | Pro se                      |
| <b>Hearing Location:</b>  | Tewksbury<br>MassHealth<br>Enrollment Center | <b>Aid Pending:</b>      | No                          |

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated September 17, 2024, MassHealth modified the appellant's request for personal care attendant services, allowing less time than was requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on November 8, 2024. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

### Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant ("PCA") services than were requested.

## Issue

The appeal issue is whether MassHealth is correct, pursuant to 130 CMR 422.000, in modifying the appellant's request for PCA services.

## Summary of Evidence

On or around September 16, 2024, the appellant's personal care management ("PCM") agency, [REDACTED] submitted a reevaluation for PCA services. This request sought 49 hours and 15 minutes per week of PCA services (2,953 minutes per week, including 840 nighttime minutes). The prior authorization period for this request runs from November 4, 2024, through November 3, 2025. The appellant's primary diagnosis is listed as osteoarthritis. His other diagnoses include: diabetes; history of heart stents; insomnia; asthma; chronic pain; neuropathy of his hands and feet; shortness of breath upon exertion; poor balance; limited standing tolerance; and a history of seizures, vertigo, depression, and bipolar disorder. MassHealth made 3 modifications and approved 44 hours and 45 minutes per week (2,673 minutes per week, including 840 nighttime minutes). (Exhibit 5, pp. 2, 6-8.)

The appellant's primary care physician submitted a letter on his behalf, identifying coronary artery disease, STEMI heart attack; multiple stenting; CPAP dependence; COPD; obesity; left ankle trauma resulting in difficulty weight bearing; and hyperlipidemia. This note requested 8 hours of assistance per day. (Exhibit 6.) The appellant walked into the hearing with the assistance of a cane. The appellant testified that he had just had another surgery last week where two more stents were placed in his heart. Before the hearing began, the appellant asked if he would be allowed to explain his needs or if he would just be told what MassHealth was going to give him. The appellant was assured of his opportunity to explain his situation in response to MassHealth's testimony regarding why MassHealth made the modifications it made. MassHealth was asked to explain each modification and then pause to allow the appellant to respond to that modification.

The first modification made by MassHealth was to the "Mobility" category of assistance. The appellant requested 5 minutes, 6 times per day, 7 days per week for the task "physical assistance with mobility." MassHealth approved 3 minutes, 6 times per day. MassHealth's representative testified that this category of assistance is meant to cover time a PCA spends physically helping a member move from one room in the home to another. MassHealth's representative noted that the appellant had walked into the appeal with a cane and asked him if there were circumstances when he needed physical assistance with mobility in his home. The appellant testified that he has left ankle damage from war, and he has had 3 surgeries on his left leg. The appellant testified that he is in constant pain and is unstable. The appellant testified he can only walk 100 to 200 feet without needing to sit. The appellant testified that he mostly needs assistance walking outside of his house. The appellant emphasized that he is a whole person who needs help throughout the day, not just with mobility.

The second modification was in the “Grooming” category of assistance. The appellant requested 5 minutes per day for an “Other” task. The task is described in the notes as “[diabetes mellitus] skin checks.” MassHealth approved 2 minutes per day “for lotion application only, no time given for skin checks.” MassHealth’s representative testified that time requested for skin checks was denied because skin checks involve assessing the appellant’s skin to determine whether there is a breakdown due to his diabetes. MassHealth’s representative testified that whenever an assessment is done, the task requires some clinical determination that is implicitly skilled, and MassHealth does not pay a PCA to perform skilled tasks. MassHealth’s representative testified that this did not necessarily mean a nurse should be visiting the appellant every day to perform skin checks. The checks could be done by someone other than the PCA or a nurse, like a family member. Finally, she argued that 2 minutes is an appropriate amount of time for a PCA to put lotion on the appellant’s body. Even if the PCA would not be authorized for skin checks, they would be seeing the appellant’s skin during this time.

The appellant responded that his daughter is his PCA, and she is a licensed practical nurse. MassHealth’s representative stated that the appellant’s daughter could perform the skin checks as his daughter, but she would not be paid by MassHealth as his PCA to do such checks. The MassHealth representative stated that the prohibition on PCAs performing skilled tasks is a universal prohibition for all PCAs; the skill level of the particular individual who is acting as PCA is irrelevant. The appellant’s daughter could perform the task as his daughter, but not as his paid PCA. When asked for additional guidance regarding this matter, MassHealth’s representative noted the PCA Operating Standards. The appellant did not know how long the skin checks take to perform.

The final modification was to meal preparation. The appellant requested 70 minutes per day for meal preparation, and MassHealth approved 45 minutes per day. MassHealth’s representative testified that this modification was made because the appellant lives with his spouse. MassHealth’s representative testified that family members are expected to provide most, if not all, of a member’s Instrumental Activities of Daily Living (“IADLs”), or chore assistance. The appellant responded that his wife is wheelchair bound and also receives PCA services. The appellant testified that his PCA cooks for both of them, and the PCA usually cooks twice a day. The appellant testified that they often reheat leftovers, and sometimes they order take-out. MassHealth’s representative looked up the appellant’s wife’s authorization for PCA services, and testified that the appellant’s wife had been authorized for 55 minutes per day for meal preparation. This 100 minutes per day was more than MassHealth usually allows for meal preparation for a household. The appellant felt that it was inappropriate for MassHealth to review both his and his wife’s PCA hours together. The appellant testified that sometimes they eat different meals because he cannot eat salt.

The appellant again reiterated his frustration with MassHealth’s method for reviewing requests for PCA assistance. The appellant argued that he only wants the time that he needs, but he was unable to testify as to how long PCA assistance with specific tasks take.

## Findings of Fact

Based on a preponderance of the evidence, I find the following:

- 1) The appellant's primary diagnosis is osteoarthritis; his other listed diagnoses include: diabetes; history of heart stents; insomnia; asthma; chronic pain; neuropathy of his hands and feet; shortness of breath upon exertion; poor balance; limited standing tolerance; and a history of seizures, vertigo, depression, and bipolar disorder. (Exhibit 5, pp. 7-8.)
- 2) On or around September 16, 2024, the appellant's PCM agency, [REDACTED] submitted a reevaluation for PCA services. The PCM agency requested 49 hours and 15 minutes of PCA assistance per week. The prior authorization period for this request runs from November 4, 2024, through November 3, 2025. (See Exhibit 5.)
- 3) Through a notice dated September 17, 2024, MassHealth made 3 modifications and approved 44 hours and 45 minutes of PCA assistance per week. (Exhibit 1.)
- 4) The appellant requested 5 minutes, 6 times per day for assistance with mobility. MassHealth allowed 3 minutes, 6 times per day. (Exhibit 5, pp. 2, 11.)
  - a. The appellant walked into the hearing using a cane. The appellant is in constant pain, and he requires a cane or a walker for stability. The appellant can walk between 100 and 200 feet before requiring a seat to rest. The appellant is generally independent with mobility inside of his home. (Testimony by the appellant.)
- 5) The appellant requested 5 minutes per day for diabetes mellitus skin checks. MassHealth allowed 2 minutes per day for applying lotion and denied time for skin checks. (Exhibit 5, pp. 2, 16.)
  - a. MassHealth modified this time because skin checks implicitly require a clinical assessment of the patient's skin integrity. This clinical assessment makes the task "skilled," and therefore inappropriate for a PCA to perform. (Testimony by MassHealth's representative.)
  - b. The appellant's PCA is an LPN and his daughter; he did not know how long the PCA spent performing skin checks. (Testimony by the appellant.)
- 6) The appellant requested 70 minutes per day for meal preparation. MassHealth allowed 45 minutes per day. (Exhibit 5, pp. 2, 29.)
  - a. The appellant lives with his wife who is approved for 55 minutes a day of PCA assistance with meal preparation. The total household time for meal preparation is 100 minutes per day. (Testimony by MassHealth's representative.)

- b. The appellant's PCA usually cooks twice a day. The appellant and his wife often reheat leftovers, and sometimes they order take-out. (Testimony by the appellant.)

## Analysis and Conclusions of Law

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416.) The regulations define a service as "medically necessary" if it is "reasonably calculated to prevent, diagnose, prevent the worsening of, alleviate correct, or cure conditions in the member that endanger life, cause suffering or pain, cause physical deformity or malfunction, threaten to cause or to aggravate a handicap, or result in illness or infirmity." (130 CMR 450.204(A).) "Medically necessary services must be of a quality that meets professionally recognized standards of health care, and must be substantiated by records including evidence of such medical necessity and quality." (130 CMR 450.204(B).) A provider must make those records, including medical records, available to MassHealth upon request. (130 CMR 450.204(B)); 42 U.S.C. § 1396a(a)(30), 42 CFR §§ 440.230, 440.260.)

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).) Members are responsible for hiring and training their own PCAs. (130 CMR 422.420(A)(6); see also 130 CMR 422.422(A) (PCM agency must confirm member is able to employ and direct PCAs, or else have a surrogate).)

ADLs include:

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self administered;
- (3) bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming;
- (4) dressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube feeding and special nutritional and dietary needs; and

(7) toileting: physically assisting a member with bowel or bladder needs.

(130 CMR 422.410(A).)

IADLs include:

(1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;

(2) meal preparation and clean-up: physically assisting a member to prepare meals;

(3) transportation: accompanying the member to medical providers; and

(4) special needs: assisting the member with:

(a) the care and maintenance of wheelchairs and adaptive devices;

(b) completing the paperwork required for receiving PCA services; and

(c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(130 CMR 422.410(B).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. Further, when multiple MassHealth members live together and are authorized for PCA services, PCA time for IADLs “must be calculated on a shared basis.” (See 130 CMR 422.410(C).) MassHealth limits what services it covers, within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers the “activity time” of “providing assistance.” (130 CMR 422.411(A).) This means that MassHealth does not cover downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

(A) social services including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;

(B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;

(C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;

(D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;

(E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;

(F) services provided by family members, as defined in 130 CMR 422.402;

(G) surrogates, as defined in 130 CMR 422.402; or

(H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412.)

Requests must “be submitted on MassHealth forms in accordance with the billing instructions in the Personal Care Manual Subchapter 5, and 130 CMR 422.416.” (130 CMR 422.416.) MassHealth may approve, deny, or modify the prior authorization request. (130 CMR 422.417.) When MassHealth denies or modifies the request, it sends a written notice of “the reason for the denial or modification and will inform the member of the right to appeal and of the appeal procedure.” (130 CMR 422.417(B)(1).) A fair hearing may be held on “any MassHealth agency action to suspend, reduce, terminate, or restrict a member's assistance; ... [or] individual MassHealth agency determinations regarding scope and amount of assistance (including, but not limited to, level-of-care determinations) ... .” (130 CMR 610.032.) This implicitly limits the scope of review to the action by MassHealth in reviewing the prior authorization request, and the member’s evaluation for services cannot be addressed de novo.

With regards to mobility, the appellant independently ambulated into and out of the MassHealth Enrollment Center at which the hearing was held. The appellant used a cane, but at no time was he assisted physically with his mobility by anyone else. The appellant alleged that he requires physical assistance with mobility outside of the home, however, the degree of the appellant’s independence supports MassHealth’s reduction in the time requested.<sup>1</sup>

Regarding meal preparation, the appellant’s testimony did not specifically contradict the time MassHealth allowed. The appellant is understandably frustrated by the system MassHealth has in place for reviewing PCA services, but he offered no testimony that explained why 100 minutes per day was insufficient for meals to be prepared for both him and his wife. The appellant and his wife do not always eat exactly the same thing because he avoids salt. However, he also testified that

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<sup>1</sup> PCA time may be allowed for assisting a member with mobility outside of the home, but the time is usually captured within the specific task being performed. For instance, going to a doctor’s appointment, or going grocery shopping. General time for supervision, recreation, or exercise is precluded from coverage by 130 CMR 422.412. This decision takes no position on the appropriateness of approving time for outdoor mobility. To the extent that the appellant alleges the time requested is for outdoor mobility, the time approved by MassHealth is sufficient.



they often reheat leftovers or order out. On balance, I cannot find that MassHealth's decision is in error based upon the evidence.

With regards to skin checks, there is no distinction in the PCA regulations between skilled and unskilled tasks, and the guidance in the PCA Operating Standards is not clear cut.<sup>2</sup> To summarize the PCA Operating Standards, there is a sliding scale of what is considered skilled, given the patient and the task being performed. The clearest distinction is that a PCA may not perform medical tasks on behalf of a child. Children are not able to direct their own care, and where a family member is available to closely direct a medical service, they could provide that service themselves, making it a non-covered service. (See 130 CMR 422.412(F).) However, adults are typically responsible for directing their own care, meaning that the knowledge and responsibility for performing a task resides principally in the member. (130 CMR 422.422(A).)

This decision need not decide whether skin checks are an appropriate task for the appellant's PCA to perform, because MassHealth approved 2 minutes of PCA assistance for this task, albeit with a notation that it was for lotion application that the appellant did not request. The appellant did not identify how the time authorized by MassHealth was insufficient to perform the task. Although MassHealth noted that the time was limited to lotion application, the PCA is observing the skin while applying the lotion. The appellant did not provide evidence as to why more time was needed for this task.

For these reasons, this appeal is DENIED.

## **Order for MassHealth**

None.

## **Notification of Your Right to Appeal to Court**

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

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Christopher Jones

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<sup>2</sup> The PCA Operating Standards are not published on MassHealth's website, but they have been made available online following a public records request. (Available at <https://www.masslegalservices.org/system/files/library/PCA%20Operating%20Standards.pdf> (last visited Jan. 9, 2025).)

Hearing Officer  
Board of Hearings

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